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PATENT
Docket No.: 023070-122010US

TOWNSEND and TOWNSEND and CREW LLP

By: [Signature]

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AUG 17 2004

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Ronaldo B. Hipolito, et al.

Application No.: 10/693,112

Filed: October 24, 2003

For: ENDOTRACHEAL TUBE

Examiner: Teena Kay Mitchell

Art Unit: 3743

COMMUNICATION

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Further to Applicants' Amendment filed on July 20, 2004, Applicants wish to direct Examiner's attention to pages 7 and 9 of the Office Action mailed on April 21, 2004, where claims 12-20, and 22 are rejected under the doctrine of obviousness double patenting in view of claims in U.S. Patent No. 6,668,832. Although Applicants do not agree with the double patenting rejections, Applicants submit an executed Terminal Disclaimer with respect to U.S. Patent No. 6,668,832 and Statement under 37 CFR 3.73(b).

Accordingly, withdrawal of the obviousness double patenting rejections is requested.

Respectfully submitted,

[Signature]
Patrick R. Jewik
Reg. No. 40,456

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60285078 v1

PTO/SB/28 (08-03)

**TERMINAL DISCLAIMER TO OBVIATE A DOUBLE PATENTING
REJECTION OVER A PRIOR PATENT**Docket Number (Optional)
023070-122010US**OFFICIAL**

In re Application of: Ronald B. Hipolito, Michael P. Sherman and Jay M. Milstein

Application No. 10/693,112

Filed: October 24, 2003

For: Endotracheal Tube

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The owner The Regents of The University of California, Inc. of 100 percent interest in the instant application hereby disclaims, except as provided below, the terminal part of the statutory term of any patent granted on the instant application, which would extend beyond the expiration date of the full statutory term defined in 35 U.S.C. 154 and 173, as presently shortened by any terminal disclaimer, of prior Patent No. 6,668,832. The owner hereby agrees that any patent so granted on the instant application shall be enforceable only for and during such period that it and the prior patent are commonly owned. This agreement runs with any patent granted on the instant application and is binding upon the grantee, its successors or assigns.

In making the above disclaimer, the owner does not disclaim the terminal part of any patent granted on the instant application that would extend to the expiration date of the full statutory term as defined in 35 U.S.C. 154 and 173 of the prior patent, as presently shortened by any terminal disclaimer, in the event that it later: expires for failure to pay a maintenance fee, is held unenforceable, is found invalid by a court of competent jurisdiction, is statutorily disclaimed in whole or terminally disclaimed under 37 CFR 1.321, has all claims canceled by a reexamination certificate, is reissued, or is in any manner terminated prior to the expiration of its full statutory term as presently shortened by any terminal disclaimer.

Check either box 1 or 2 below, if appropriate.

1. ☒ For submissions on behalf of an organization (e.g., corporation, partnership, university, government agency, etc.), the undersigned is empowered to act on behalf of the organization.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

2. ☐ The undersigned is an attorney of record.

Linda Stevenson 8/2/04
Signature Date

Linda Stevenson

Typed or printed name

- ☒ Terminal disclaimer fee under 37 CFR 1.20(d) is included.

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*Statement under 37 CFR 3.73(b) is required if terminal disclaimer is signed by the assignee (owner).
Form PTO/SB/96 may be used for making this certification. See MPEP § 324.

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PTO/SB/96 (08-03)

Attorney Docket No. 023070-122010US

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AUG 17 2004

STATEMENT UNDER 37 CFR 3.73(b)Applicant/Patent Owner: Michael P. Sherman/The Regents of the University of CaliforniaApplication No./Patent No.: 10/693,112Filed/Issue Date: October 24, 2003Entitled: Endotracheal TubeThe Regents of the University of California, a University

(Name of Assignee)

(Type of Assignee, e.g., corporation, partnership, university, government agency, etc.)

states that it is:

1. ☒ the assignee of the entire right, title, and interest; or
2. ☐ an assignee of less than the entire right, title and interest.
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In the patent application/patent identified above by virtue of either:

- A. ☒ An assignment from the inventor(s) of the patent application/patent identified above. The assignment was recorded in the United States Patent and Trademark Office at Reel 013379, Frame 0006, or for which a copy thereof is attached.

OR

- B. ☐ A chain of title from the inventor(s), of the patent application/patent identified above, to the current assignee as shown below:

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(NOTE: A separate copy (i.e., the original assignment document or a true copy of the original document) must be submitted to Assignment Division in accordance with 37 CFR Part 3, if the assignment is to be recorded in the records of the USPTO. See MPEP 302.8)

The undersigned (whose title is supplied below) is authorized to act on behalf of the assignee.

August 2, 2004

Date

(510) 587-6000

Telephone number

Linda Stevenson

Typed or printed name

Linda Stevenson

Signature

Manger, Patent Prosecution

Title

60264580 v1